

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAVID CARMINE LETTIERI,

Plaintiff(s),

v.

T-MOBILE, et al.,

Defendant(s).

CASE NO. C24-0028-KKE

ORDER REVOKING *IN FORMA*
PAUPERIS STATUS ON APPEAL

Plaintiff David Carmine Lettieri, proceeding *pro se* and *in forma pauperis*, filed a notice of appeal (Dkt. No. 14) after the Court dismissed his complaint without prejudice for failure to state a claim (Dkt. No. 10). The Ninth Circuit referred the matter back to this Court “for the limited purpose of determining whether [Lettieri’s] *in forma pauperis* status should continue for this appeal or whether the appeal is frivolous or taken in bad faith.” Dkt. No. 16 (citing 28 U.S.C. § 1915(a)(3)). For the reasons explained herein, the Court finds that Lettieri’s appeal is frivolous and therefore his *in forma pauperis* status should be revoked on appeal.

An appeal brought in good faith must request review of “at least one issue or claim” that is “non-frivolous.” *See Hooker v. Am. Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002). A frivolous claim “lacks an arguable basis either in law or in fact.” *Nietzke v. Williams*, 490 U.S. 319, 325 (1989).

1 After U.S. Magistrate Judge Brian Tsuchida recommended that this Court screen Lettieri's
2 original complaint before issuing summons, the Court found that Lettieri's original complaint
3 failed to state a valid claim. Dkt. No. 8. The Court provided Lettieri additional time to amend his
4 complaint. *Id.* Lettieri's amended complaint again failed to state a claim, however, and the Court
5 dismissed it without prejudice. Dkt. No. 10. Lettieri requested reconsideration of that order, while
6 simultaneously filing a notice of appeal. Dkt. No. 12. The Court denied Lettieri's motion for
7 reconsideration and separately docketed the notice of appeal. Dkt. No. 13.

8 Because the Court has found that Lettieri's amended complaint fails to state a claim, and
9 because Lettieri has failed to establish error in that finding, the Court does not find merit in
10 Lettieri's appeal. The Court does not find that there is "at least one issue or claim" that Lettieri
11 wishes to appeal that has an arguable basis in law or fact, and therefore certifies that Lettieri's
12 appeal is not taken in good faith under 28 U.S.C. § 1915(a)(3).

13 Accordingly, the Court ORDERS that Lettieri's *in forma pauperis* status be revoked on
14 appeal.

15 Dated this 24th day of May, 2024.

16 

17 _____
18 Kimberly K. Evanson
19 United States District Judge
20
21
22
23
24